Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 22 January 2013[1]

Case C-239/12 P

Abdulbasit Abdulrahim
v
Council of the European Union
and

European Commission

(Appeal — Common foreign and security policy (CFSP) — Restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban — Regulation (EC) No 881/2002 — Removal of the interested party from the list of persons, groups and entities covered by the freezing of funds and economic resources — Interest in bringing proceedings — No need to adjudicate)

1. The General Court of the European Union has recently adopted a number of orders declaring that there is no need to adjudicate on the basis that the names of the applicants have been removed from the lists imposing restrictive measures.[2]

2. This is an appeal against the order of the General Court of 28 February 2012 in Case T-127/09 *Abdulrahim* v *Council and Commission* ('the order under appeal') by which the General Court ruled, in particular, that there was no longer any need to adjudicate on the action for annulment which Mr Abdulrahim had brought against Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan,[3] as amended by Commission Regulation (EC) No 1330/2008 of 22 December 2008,[4] or the latter regulation.

1 — Original language: French.

2 — Orders in Case T-142/11 *SIR* v *Council*; Case T-160/11 *Petroci* v *Council*; Case T-255/11 *Fellah* v *Council*; Case T-285/11 *Gooré* v *Council*; Case T-436/11 *Afriqiyah Airways* v *Council*; Case T-527/09 *Ayadi* v *Commission*; Case T-218/11 *Dagher* v *Council*; Joined Cases T-76/07, T-362/07 and T-409/08 *El Fatmi* v *Council*; Joined Cases T-118/11, T-123/11 and T-124/11 *Attey and Others* v *Council*; Joined Cases T-131/11, T-132/11, T-137/11, T-139/11 to T-141/11, T-144/11 to T-148/11 and T-182/11 *Ezzedine and Others* v *Council*; and Case T-543/11 *Ghreiwati* v *Council*.

3 — OJ 2002 L 139, p. 9.

4 — OJ 2002 L 345, p. 60.

3. The issue at the heart of this appeal is that of whether or not applicants have a continuing interest in bringing proceedings where the restrictive measure to which they are subject has been revoked in the course of the proceedings. [5]

4. In this Opinion, I shall explain why I consider that the General Court erred in law by holding that there was no longer any need for it to adjudicate on Mr Abdulrahim's action for annulment because he had failed to retain an interest in bringing proceedings.

I – **Legal context and background to the dispute**

5. On 21 October 2008 the name of Mr Abdulrahim was added to the list drawn up by the Sanctions Committee established by United Nations Security Council Resolution 1267 (1999) of 15 October 1999 on the situation in Afghanistan.

6. By Regulation No 1330/2008, Mr Abdulrahim's name was accordingly added to the list of persons and entities whose funds and other economic resources must be frozen under Council Regulation No 881/2002 ('the list at issue').

7. By application, the signed original of which was received at the General Court Registry on 15 April 2009, Mr Abdulrahim brought an action against the Council of the European Union and the European Commission, seeking essentially: (i) annulment of Regulation No 881/2002 or of Regulation No 1330/2008, in so far as those acts concern him; and (ii) compensation for the damage allegedly caused by those acts. That action was registered as Case T-127/09.

8. On 22 December 2010 the Sanctions Committee decided to remove Mr Abdulrahim's name from its list.

9. On 6 January 2011 Mr Abdulrahim's lawyers wrote to the Commission asking for his name to be removed from the list at issue.

10. By Commission Regulation (EU) No 36/2011 of 18 January 2011 amending for the 143rd time Regulation No 881/2002, [6] Mr Abdulrahim's name was removed from the list at issue.

11. By letter received at the Registry on 27 July 2011, the Commission sent the General Court a copy of Regulation No 36/2011.

12. By letter from the Registry of 17 November 2011, the parties were requested to express their views in writing on the conclusions to be drawn, especially in the light of the purpose of the action, from the adoption of Regulation No 36/2011.

13. In their written observations, lodged at the Registry on 6 December 2011, the Council and the Commission asked the General Court to declare that the application for annulment had become devoid of purpose and that there was no longer any need to adjudicate in that regard. Those parties maintained their earlier heads of claim as regards the claim for damages and the costs.

5 — Other cases pending before the Court such as Case C-183/12 P *Ayadi* v *Commission* raise a similar issue. Moreover, in the context of Joined Cases C-584/10 P, C-593/10 P and C-595/10 P *Commission* v *Kadi*, still pending before the Court, Mr Kadi was removed from the list at issue in the course of the proceedings, as was Ms Danièle Boni-Claverie in Case C-480/11 P *Boni-Claverie* v *Council*, pending before the Court. See also judgment of 15 November 2012 in Case C-417/11 P *Council* v *Bamba*, in which the Court did not, at the stage of giving its ruling in the case, draw any conclusions as to Ms Bamba's interest in bringing proceedings from the fact that she had, at the end of a regular review of the lists of persons subject to the restrictive measures in question which occurred in the course of the proceedings, ceased to be included on those lists (paragraph 88).

6 — OJ 2011 L 14, p. 12 and corrigendum OJ 2011 L 36, p. 12.

14. Mr Abdulrahim opposed the application for a declaration of no need to adjudicate on the application for annulment. Relying, inter alia, on *PKK* v *Council*,[7] Mr Abdulrahim submitted the arguments summarised in paragraph 19 of the order under appeal, to which the General Court responded in that order.

II – **The order under appeal**

15. The order under appeal was delivered on the basis of Article 113 of the Rules of Procedure of the General Court, according to which the latter may at any time, of its own motion, after hearing the parties, consider whether there exists any absolute bar to proceeding with an action or declare that the action has become devoid of purpose and that there is no need to adjudicate on it.[8] The General Court considered that it had sufficient information from the documents in the file to decide on the matter without opening the oral stage of the proceedings.

16. In paragraph 22 of that order, the General Court first of all recalled the case-law according to which an applicant's interest in bringing proceedings must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which the action will be inadmissible. That purpose must, like the interest in bringing proceedings, persist until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be liable, if successful, to procure an advantage for the party bringing it.[9]

17. In paragraph 24 of the order under appeal, the General Court also recalled the case-law according to which the withdrawal – or, in certain circumstances, the repeal – of the contested act by the defendant institution divests the action for annulment of its purpose, since it leads, for the applicant, to the desired outcome and gives him full satisfaction.[10]

18. In paragraph 27 of that order, the General Court found that by Regulation No 36/2011 the Commission deleted the entry relating to Mr Abdulrahim's name from the list at issue, originally made by Regulation No 1330/2008. Such a deletion entails the repeal of Regulation No 1330/2008 in so far as that act concerned Mr Abdulrahim. According to the General Court, in paragraph 28 of the order under appeal, that repeal leads, for Mr Abdulrahim, to the desired outcome and gives him full satisfaction, given that, following the adoption of Regulation No 36/2011, he is no longer subject to the restrictive measures which adversely affected him.

19. In paragraphs 29 and 30 of that order, the General Court recalled that it is true that the applicant may, in an action for annulment, retain an interest in the annulment of a measure which is repealed in the course of the proceedings if the annulment of that measure may in itself have legal consequences.[11] Where an act is annulled, the institution which adopted it is required under Article 266 TFEU to take the necessary measures to comply with the related judgment. Those measures do not involve the elimination of the act as such from the legal order of the European Union because that is the very

7 — Case T-229/02, paragraphs 46 to 51.

8 — That provision states that the decision is to be given in accordance with Article 114(3) ('[u]nless the General Court otherwise decides, the remainder of the proceedings shall be oral') and (4) ('[t]he General Court shall, after hearing the Advocate General, decide on the application or reserve its decision for the final judgment') of the rules of procedure.

9 — The General Court referred, in that regard, to Case C-362/05 P *Wunenburger* v *Commission* [2007] ECR I-4333, paragraph 42 and the case-law cited, and to Joined Cases T-494/08 to T-500/08 and T-509/08 *Ryanair* v *Commission* [2010] ECR II-5723, paragraphs 42 and 43.

10 — In that regard, the General Court referred to its orders in Case T-451/04 *Mediocurso* v *Commission*, paragraph 26 and the case-law cited; *SIR* v *Council*, paragraph 18, and *Petroci* v *Council*, paragraph 15.

11 — It referred, in that regard, to its orders in Case T-25/96 *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd* v *Commission* [1997] ECR II-363, paragraph 16, and Case T-184/01 *IMS Health* v *Commission* [2005] ECR II-817, paragraph 38.

essence of its annulment by the Court. They involve, rather, the removal of the effects of the illegalities established in the judgment annulling the act. The institution concerned may thus be required to take adequate steps to restore the applicant to his original situation or to refrain from the adoption of an identical measure.[12]

20. In paragraph 31 of the order under appeal, the General Court ruled, however, that in the present case it is not apparent from the case-file or the applicant's arguments that, following the adoption of Regulation No 36/2011, the action for annulment is liable to procure for the applicant an advantage for the purposes of the case-law referred to in paragraph 22 of that same order, with the result that he retains an interest in bringing proceedings.

21. In particular, as regards, first, the fact that the repeal of an act of an institution of the European Union does not amount to recognition of its illegality and takes effect *ex nunc*, by contrast with a judgment annulling an act, by virtue of which the act annulled is removed retroactively from the legal order of the European Union and deemed never to have existed,[13] the General Court pointed out, in paragraph 32 of the order under appeal, that that fact cannot establish an interest on the part of Mr Abdulrahim in securing the annulment of the contested regulation.

22. In paragraph 33 of its order, the General Court stated that, in the circumstances of the present case, there is nothing to indicate that the removal *ex tunc* of Regulation No 1330/2008 would procure any advantage for the applicant. In particular, there is nothing to establish that, in the event of a judgment annulling that act, the Commission would be required, pursuant to Article 266 TFEU, to adopt measures designed to remove the effects of the illegality held to exist.

23. In paragraph 34 of the order under appeal, the General Court further stated that recognition of the alleged illegality itself may indeed constitute one of the forms of reparation sought through a claim for damages under Articles 268 TFEU and 340 TFEU. On the other hand, such recognition is not sufficient to establish a continuing interest in bringing proceedings under Articles 263 TFEU and 264 TFEU for the annulment of acts of the institutions. Were the position otherwise, an applicant would permanently retain an interest in seeking the annulment of an act, notwithstanding its withdrawal or repeal, and that would be incompatible with the case-law referred to in paragraphs 24 and 29 of that order.

24. With regard to the case-law according to which an applicant may retain an interest in securing the annulment of a decision imposing restrictive measures which has been repealed and replaced,[14] the General Court held, in paragraph 35 of the order under appeal, that that case-law was developed in a specific context which differs from that in the present case. Unlike Regulation No 1330/2008, the acts at issue in those cases had not only been repealed, but had also been replaced by new acts, and the restrictive measures relating to the entities concerned had been maintained. The original effects of the acts which had been repealed thus continued, in relation to the entities concerned, by means of the acts which replaced them. In the present case, however, according to the General Court, Regulation No 36/2011 quite simply removes the applicant's name from the list at issue, thereby repealing Regulation No 1330/2008 in so far as it concerns the applicant, but not replacing it. The effects produced by that regulation do not therefore persist. In addition, according to the General Court, that case-law is based on the difference between the effects of the repeal of an act and the effects of its annulment, a factor which is not relevant in the present case, as is apparent from paragraph 32 of the order under appeal.

12 — The General Court referred, in that regard, to the order in *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd* v *Commission*, paragraph 17 and the case-law cited.

13 — The General Court cites, to that effect, Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 46.

14 — See, to that effect, in addition to *PKK* v *Council*, paragraphs 46 to 51, Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665, paragraph 35; the judgment of 11 July 2007 in Case T-327/03 *Al-Aqsa* v *Council*, paragraph 39; and Case T-256/07 *People's Mojahedin Organization of Iran* v *Council* [2008] ECR II-3019, paragraph 48.

25. In paragraph 36 of the order under appeal, the General Court stated that that distinction is confirmed by the judgment in Joined Cases C-399/06 P and C-403/06 P *Hassan and Ayadi* v *Council and Commission*.[15] First, instead of concluding automatically that the applicants concerned retained an interest in bringing proceedings in the cases in question, the Court of Justice raised, of its own motion, in paragraph 57 of that judgment, the question whether, in the light of the withdrawal of the contested regulation and its retroactive replacement by another act, it was still necessary to adjudicate on the cases concerned. Secondly, in paragraphs 59 to 63 of that judgment, the Court of Justice pointed out a certain number of particular circumstances in the cases before it, which led it to conclude, in paragraphs 64 and 65 of the same judgment, that, 'in these particular circumstances', and in contrast to what had been held in the order in *Lezzi Pietro* v *Commission*,[16] the adoption of the new act (and the concomitant repeal of the contested regulation) could not be regarded as equivalent to the annulment, pure and simple, of the contested regulation. Those particular circumstances do not, however, according to the General Court, obtain in the present case. More specifically, in the present case, Regulation No 36/2011 is final inasmuch as it may no longer be the subject of an action for annulment. Consequently, it is inconceivable that Regulation No 1330/2008 might come back into force so far as the applicant is concerned, contrary to the finding made by the Court of Justice in paragraph 63 of *Hassan and Ayadi* v *Council and Commission*.

26. As regards, secondly, the fact that an applicant may retain an interest in seeking the annulment of an act of a European Union institution in order to prevent its alleged unlawfulness recurring in the future,[17] the General Court pointed out, in paragraph 37 of the order under appeal, that such an interest in bringing proceedings, which follows from the first paragraph of Article 266 TFEU, can exist only if the alleged unlawfulness is liable to recur in the future independently of the circumstances of the case which gave rise to the action.[18] In the present case, however, according to the General Court, there is nothing in the file to suggest that this might happen. On the contrary, as Regulation No 36/2011 was adopted in view of the specific circumstances of the applicant and, apparently, of developments in the situation in Libya, the General Court considered that it did not appear likely that the alleged unlawfulness might recur in the future independently of the circumstances which had given rise to the action.

27. As regards, thirdly, the argument that there is an overriding public interest in having the alleged infringement of a mandatory rule of international law penalised, the General Court considered, in paragraph 38 of the order under appeal, that, whilst the Commission should not be acknowledged as having any impunity in that regard, that argument was not sufficient to establish that the applicant had a personal interest in the continuation of the action. Even though, as observed by the applicant, the Commission must comply with the mandatory rules of international law and is not entitled to adopt a decision based on information obtained through torture, the applicant is not, according to the General Court, entitled to act in the interests of the law, or of the institutions, and can put forward only such interests and claims as relate to him personally.[19]

28. As regards, fourthly, the possibility that detrimental consequences might, as the case may be, follow from the alleged unlawfulness of Regulation No 1330/2008, the General Court pointed out, in paragraph 39 of the order under appeal, that the application made by the defendant institutions for a declaration that there is no need to adjudicate related only to the application for annulment. According to the General Court, it therefore remained open to Mr Abdulrahim to seek compensation for the damage which, in his claim for damages under Article 268 TFEU and the second and third paragraphs of Article 340 TFEU, he purports to have sustained.[20]

15 — Joined Cases C-399/06 P and C-403/06 P [2009] ECR I-11393.

16 — Case C-123/92 [1993] ECR I-809.

17 — As regards that situation, the General Court referred to *Wunenburger* v *Commission*, paragraph 50.

18 — Ibid., paragraphs 51 and 52.

19 — The General Court cites, to that effect, Case 85/82 *Schloh* v *Council* [1983] ECR 2105, paragraph 14.

20 — That application was examined in paragraph 42 et seq. of the order under appeal.

29. As regards, fifthly and lastly, the argument relating to the alleged need to secure a decision on the merits of the present action for the purposes of the recovery of the costs incurred by the applicant, the General Court referred to paragraphs 69 to 71 of the order under appeal.

30. Following those considerations, the General Court concluded, in paragraph 41 of the order under appeal, that there was no longer any need to adjudicate on the application for annulment.

31. With regard to the claim for damages, the General Court considered that it appeared to be manifestly lacking any foundation in law – or even to be manifestly inadmissible – in the light of the procedural documents, the information in the case-file and the explanations provided by the parties in their written pleadings.

32. Having recalled, in paragraph 45 of the order under appeal, the conditions necessary for the European Union to incur non-contractual liability for unlawful conduct on the part of its institutions, the General Court held, in paragraph 48 of that order, that the damage was neither quantified nor proven.

33. The General Court also held, in paragraph 52 of the order under appeal, that the causal link was not established, since the direct and immediate cause of the material damage purportedly sustained by Mr Abdulrahim, arising from the unavailability of his funds, financial assets and other economic resources and consisting in his being deprived of their use, was not the adoption of the Community acts at issue in the present case, but the adoption of subsequent decisions, that is to say, the adoption, on 21 October 2008, of the Sanctions Committee's decision adding his name to its list and of the United Kingdom authorities' decision adopting restrictive measures in his regard.

III – **The appeal**

34. The appellant claims that the Court should:

— set aside the order delivered by the General Court on 28 February 2012;

— declare that the action for annulment is not devoid of purpose;

— refer the case back to the General Court for it to rule on the application for annulment;

— order the Commission to pay the costs of this appeal and of the proceedings before the General Court, including the costs of submitting observations upon the General Court's invitation.

35. In support of those claims, the appellant raises two grounds of appeal.

36. By his first ground of appeal, which is subdivided into three parts, the appellant claims that the General Court erred in law in failing to request an Advocate General's Opinion, and/or to invite the appellant to submit observations regarding the possible opening of the oral stage of the proceedings, and/or to open the oral stage of the proceedings concerning whether the action for annulment had become devoid of purpose.

37. By his second ground of appeal, the appellant claims that the General Court erred in law in finding that the action had become devoid of purpose.

IV – **My assessment**

A – *The first ground of appeal*

1. First part: error of law in failing to request an Advocate General's Opinion

38. The appellant claims that, in so doing, the General Court infringed Article 114(4) of its Rules of Procedure, which is referred to by Article 113 thereof, on the basis of which the order under appeal was adopted.

39. It is sufficient, in that regard, to recall the case-law of the Court according to which the General Court's obligation to hear the Advocate General before giving a decision on an action must be read in the light of Articles 2(2), 18 and 19 of its Rules of Procedure, from which it is apparent, first, that the designation of a Judge of the General Court as Advocate General is optional where the General Court sits in chamber and, second, that references to the Advocate General in those Rules of Procedure are to apply only where a Judge has in fact been designated as Advocate General.[21] Since no Advocate General was designated to assist the second chamber of the General Court in Case T-127/09, there was no obligation to hear an Advocate General before declaring that there was no longer any need to adjudicate on the matter. The General Court has thus not committed any error of law in that regard.

40. It follows that the first part of the first ground of appeal must be rejected as unfounded.

2. Second part: error of law in failing to invite the appellant to submit observations concerning the possible opening of the oral stage of the proceedings

41. The appellant relies on a comparison of the Rules of Procedure of the Court of Justice, in the version in force at the time the present appeal was brought, and the Rules of Procedure of the General Court, and on Article 47 of the Charter of Fundamental Rights of the European Union, to claim that the General Court could not omit the oral stage of the proceedings without first inviting him to submit his observations on that matter.

42. It is sufficient, in that regard, to note that the wording of Articles 113 and 114(3) and (4) of the Rules of Procedure of the General Court do not require such a consultation of the parties. As the Council rightly points out, by asking the parties to express their views in writing on the conclusions to be drawn from the adoption of Regulation No 36/2011, especially in the light of the purpose of action, the General Court acted in accordance with Article 113 of its Rules of Procedure. After hearing the parties, the General Court acted in accordance with Article 114(3) of those Rules of Procedure in deciding that there was no need to open the oral stage of the proceedings before giving a ruling. No error of law can be attributed to it in that regard.

43. The second part of the first ground of appeal must therefore be rejected as unfounded.

21 — Orders of 25 June 2009 in Case C-580/08 P *Srinivasan* v *Ombudsman*, paragraph 35; of 22 October 2010 in Case C-266/10 P *Seacid* v *Parliament and Council*, paragraph 11, and judgment in Case C-426/10 P *Bell & Ross* v *OHIM* [2011] ECR I-8849, paragraph 28.

3. Third part: error of law in failing to open the oral stage of the proceedings

44. The appellant considers that it is only in exceptional circumstances that the General Court has the option of omitting the oral stage of the proceedings, the constitutional importance of which he emphasises. According to the appellant, the oral stage of the proceedings should be omitted only in cases which raise no crucial issue of law and/or fact. He notes that, following the response which he sent to the General Court relating to the retention of his interest in bringing proceedings and the short observations of the Commission and of the Council, the General Court moved straight to judgment.

45. The appellant claims that almost all the General Court's reasoning focuses on issues and case-law which have not been subject to discussion and concerning which he has had no opportunity to be heard either in writing or orally. Leaving aside the case-law cited, the General Court in particular raised matters of fact concerning the situation in Libya and the fact that it is purportedly unlikely that the alleged breach would recur in the future.

46. It is sufficient to state, as does the Commission, that, in accordance with Articles 113 and 114(3) of its Rules of Procedure, the General Court could adopt the order under appeal without opening the oral stage of the proceedings, since it considered that it was sufficiently informed and that the applicant had had the opportunity to submit written observations on the issue.[22] Moreover, as the Council notes, the appellant does not specifically indicate what further information he could have brought before the General Court at a hearing beyond the written observations which he had submitted.

47. In the light of those factors, I consider that the third part of the first ground of appeal must be rejected as unfounded.

48. Since none of the three parts of the first ground of appeal have been successful, the first ground of appeal must be dismissed in its entirety as unfounded.

B – *The second ground of appeal*

49. According to the appellant, the General Court erred in law in ruling that his action became devoid of purpose and that there was no longer any need to adjudicate on his application for annulment. Generally, he criticises the strict assessment of the General Court that the continuation of the proceedings was not liable, if successful, to procure an advantage for the appellant.

50. In particular, it follows from the line of argument put forward by the appellant before the Court that he does not accept that the deletion of the entry relating to his name from the list at issue, which entails the repeal of Regulation No 1330/2008, is likely to give him 'full satisfaction', contrary to what the General Court held in paragraph 28 of the order under appeal. In so doing, the appellant challenges, in fact, the negative assessment made by the General Court concerning his continuing interest in bringing proceedings.

51. To have an interest in bringing proceedings, an applicant must be able to demonstrate the practical effect which the annulment of the contested act will have for him.[23] The requirement of an interest in bringing proceedings applies with regard both to an action for annulment and to an appeal.[24] That interest must be not only personal, but also current.

22 — See, in particular, Case C-547/03 P *AIT* v *Commission* [2006] ECR I-845, paragraph 35, and order in Case C-368/05 P *Polyelectrolyte Producers Group* v *Council and Commission* [2006] ECR I-130, paragraph 46.

23 — See point 19 of the Opinion of Advocate General Tesauro in Case C-19/93 P *Rendo and Others* v *Commission* [1995] ECR I-3319.

24 — See, inter alia, with regard to appeals, *Rendo and Others* v *Commission*, paragraph 13, *Hassan and Ayadi* v *Council and Commission*, paragraph 58, and Case C-27/09 P *France* v *People's Mojahedin Organization of Iran* [2011] ECR I-13427, paragraph 43 and case-law cited.

52. The personal dimension of the interest in bringing proceedings is characterised by the fact that the contested act must adversely affect the sphere of interests of an applicant, in that such an act must cause damage to him.[25] In other words, that act must have 'an adverse affect' [sic] on the applicant's position,[26] and that effect must take the form of the existence of harm.[27] Accordingly, even though that rule contains nuances,[28] nobody has, in principle, an interest in challenging the lawfulness of a decision which is favourable to him.[29]

53. Annulment of the contested act must procure an advantage for or benefit the applicant. As stated by Advocate General Lenz, it is necessary that 'the applicant's legal position improves'[30] as a consequence of annulment of the contested act before the personal dimension of the interest in bringing proceedings can exist. The applicant must be able to benefit from the annulment, in that the annulment will eliminate the unfavourable consequences of the act at issue on his legal position.[31] Thus expressed, the requirement that the interest must be personal reflects the idea that an applicant cannot act in the interests of the law.[32]

54. Moreover, the interest in bringing proceedings presupposes that the applicant establishes that the act called into question affects in a sufficiently direct and certain manner his legal or material situation, so that the judgment is likely to bring him effective relief, even if purely non-material.[33] What is decisive in the context of the examination of the requirement of a personal interest is that the act must actually adversely affect the applicant. It is therefore not sufficient that the contested act is, in itself, such as to cause damage. In other words, the assessment of the interest in bringing proceedings must not be carried out *in abstracto*, but must be carried out in the light of the applicant's personal situation.[34]

55. It is for the applicant to prove that his material or legal situation is affected, even if, in fact, that proof can be derived from the very purpose of the action. Accordingly, the fact that a decision was addressed to the applicant which is unfavourable to him has sometimes been regarded as sufficient to confer on him an interest in bringing proceedings.[35]

56. As for the temporal dimension of the interest in bringing proceedings, this means that the interest must exist at the time of bringing the action and continue throughout the course of the proceedings. As the General Court stated in paragraph 22 of the order under appeal, the purpose must, like the interest in bringing proceedings, persist until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be liable, if successful, to procure an advantage for the party bringing it. In particular, and this was also pointed out by the General Court in paragraph 29 of that order, the applicant may, in an action for annulment, retain an interest in the annulment of a measure which is repealed in the course of the proceedings if the annulment of that measure may in itself have legal consequences.

25 — Cassia, P., 'L'accès des personnes physiques ou morales au juge de la légalité des actes communautaires', Dalloz, 2002, p. 464.

26 — Case T-16/96 *Cityflyer Express* v *Commission* [1998] ECR II-757, paragraph 34.

27 — Cassia, P., *op. cit.*, p. 464.

28 — See, on that point, Rideau, J., *Jurisclasseur Europe*, fascicule 330, paragraph 88.

29 — See, in particular, order of the President of the General Court in Case T-6/95 R *Cantine dei colli Berici* v *Commission* [1995] ECR II-647, paragraph 29.

30 — See point 9 of the Opinion of Advocate General Lenz in Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853.

31 — Wathelet, M., 'Contentieux européen', Larcier, 2010, p. 186.

32 — Van Raepenbusch, S., *L'intérêt à agir dans le contentieux communautaire*, 'Mélanges en hommage à Georges Vandersanden', Bruylant 2008, p. 384.

33 — Ibidem, p. 385.

34 — Ibidem, pp. 389 and 390. The author cites the following judgments: Case 15/67 *Bauer* v *Commission* [1967] ECR 511; Joined Cases T-285/02 and T-395/02 *Vega Rodriguez* v *Commission* [2004] ECR-SC I-A-333 and II-1527, paragraph 25, and order of the Civil Service Tribunal in Case F-3/05 *Schmit* v *Commission* [2006] ECR-SC I-A-1-9 and II-A-1-33, paragraph 40.

35 — See, with regard to decisions declaring a merger incompatible with the common market, Case T-102/96 *Gencor* v *Commission* [1999] ECR II-753, paragraph 42, and Case T-22/97 *Kesko* v *Commission* [1999] ECR II-3775, paragraph 57.

57. As the General Court was able to state in the context of another case, it is in the interest of the proper administration of justice that it may find that there is no longer any need to adjudicate on the action in the event that an applicant who initially had a legal interest in bringing proceedings has lost all personal interest in having the contested decision annulled on account of an event occurring after that action was brought.[36]

58. I consider, however, that the General Court carried out, in the order under appeal, an excessively strict assessment of the appellant's continuing interest in bringing proceedings. Like the appellant, I consider that the General Court's reasoning warrants criticism in several respects.

59. Accordingly, contrary to what the General Court held in paragraph 32 of the order under appeal, I consider that the fact that the repeal of an act of an institution of the European Union does not amount to recognition of its illegality and solely takes effect *ex nunc*, by contrast with a judgment annulling an act, by virtue of which the act annulled is removed retroactively from the legal order of the European Union and deemed never to have existed,[37] is, in the context of the present case, capable of forming the basis of Mr Abdulrahim's interest in obtaining the annulment of Regulation No 1330/2008. In that regard, it is incorrect, in my view, to assert, as the General Court did in paragraph 33 of the order under appeal, that 'in the circumstances of the present case, there is nothing to indicate that the removal *ex tunc* of Regulation No 1330/2008 would procure any advantage for Mr Abdulrahim'.

60. The appellant has a personal interest, which remains notwithstanding the repeal of the contested act in the course of the proceedings, in seeking the retroactive elimination of his inclusion on the list at issue within the legal order of the European Union, which is the very essence of the annulment of a European Union act by the courts of the European Union. It is of little moment, in that regard, contrary to what the General Court seems to consider as being decisive in paragraph 33 of the order under appeal, that, in the event of a judgment annulling that act, the Commission and/or the Council would not be required, pursuant to Article 266 TFEU, to adopt supplementary measures designed to remove the effects of the illegalities held to exist in the judgment annulling that act.

61. In the context of the asset-freezing measures at issue in this case, which unquestionably have an adverse effect on the persons concerned not only by restricting the use of their property rights, but also by publicly designating them as being associated with a terrorist organisation,[38] it is, in my view, clear that an applicant has a continuing interest, in spite of the repeal of the European Union act at issue, in having the courts of the European Union recognise that he should never have been included on the list at issue or that he should not have been included according to the procedure which was adopted by the European Union institutions. From the point of view of the appellant and the satisfaction which he seeks by bringing an action for annulment against his inclusion, such recognition of the formal and/or substantive illegality of the contested act is not tantamount to the removal for the future of his inclusion. It is necessary, in that regard, to bear in mind that such removal for the future is not capable of dispelling the doubt as to the merits or otherwise of the inclusion and/or the legality of the procedure which led to that inclusion within the European Union.

62. The continuing interest in bringing proceedings upon which the appellant may rely, in the circumstances of the present case, lies, more specifically, in the following factors.

36 — Order in Case T-28/02 *First Data and Others* v *Commission* [2005] ECR II-4119, paragraph 36.

37 — On that distinction, see, in particular, *Exporteurs in Levende Varkens and Others* v *Commission*, paragraph 46, and *Organisation des Modjahedines du peuple d'Iran* v *Council*, paragraph 35.

38 — The Court has accordingly recognised that restrictive measures have an important impact on the rights and freedoms of the persons targeted. See, inter alia, *Hassan and Ayadi* v *Council and Commission*, paragraph 60 and the case-law cited. See, also Case C-229/05 P *PKK and KNK* v *Council* [2007] ECR I-439, paragraph 110.

63. First, it follows from the case-law of the Court of Justice that the appellant may retain an interest in claiming the annulment of an act of a European Union institution to prevent its alleged unlawfulness recurring in the future.[39] According to another form of wording, the interest in bringing proceedings remains where the annulment of the contested act is of itself capable of having legal consequences, in particular by preventing a repetition by the European Union institutions of an improper practice.[40] That interest in bringing proceedings follows from the first paragraph of Article 266 TFEU under which the institutions whose act has been declared void are to be required to take the necessary measures to comply with the judgment of the Court.[41]

64. It is true that the Court has stated that that interest in bringing proceedings can exist only if the alleged unlawfulness is liable to recur in the future, independently of the circumstances of the case which gave rise to the action brought by the applicant. Contrary to what the General Court ruled in paragraph 37 of the order under appeal, that condition is however fulfilled in the action for annulment brought by the appellant. That action aims in particular to challenge the compatibility of the contested regulation with European Union law from a procedural standpoint, in particular with regard to the right to a fair hearing and the right to effective judicial review. The appellant retains an interest in obtaining a judgment on the legality of the procedure which led to his inclusion on the list at issue within the European Union so that the alleged illegality does not recur in the future in the context of a similar procedure which might be conducted against him.[42] A judgment of the courts of the European Union could require, if appropriate, the institutions of the European Union to make appropriate changes in the future to the system of inclusion on the lists.[43]

65. Secondly, the appellant may legitimately rely on the fact that recognition of the alleged illegality would be capable of rehabilitating him by restoring his reputation. Accordingly, I consider that the appellant has at least a non-material interest in obtaining a declaration by the courts of the European Union that he should never have been included on the list at issue or that he should not have been included according to the procedure which was adopted by the institutions of the European Union.[44] I also note that the appellant relies in his application for annulment on an infringement of his right to private and family life with reference in particular to the damage done to his reputation.[45] Irrespective of an action for damages, a judgment annulling the act is therefore likely to constitute a form of compensation for the non-material damage suffered by the applicant.

66. I therefore disagree with the Commission and the Council where those institutions argue that a judgment ordering annulment based on procedural pleas in law could not help to restore the appellant's reputation. Indeed, such a line of argument seems to me to deny the fact that form and substance are inextricably linked, so that a procedural irregularity is capable of influencing the content

39 — *Wunenburger* v *Commission*, paragraph 50 and the case-law cited.

40 — See, in particular, Case 53/85 *AKZO Chemie and Akzo Chemie UK* v *Commission* [1986] ECR 1965, paragraph 21; Case T-46/92 *Scottish Football* v *Commission* [1994] ECR II-1039, paragraph 14; and Case T-121/08 *PC-Ware Information Technologies* v *Commission* [2010] ECR II-1541, paragraphs 39 and 40. See also, in the context of an appeal, Case C-535/06 P *Moser Baer India* v *Council* [2009] ECR I-7051, paragraph 25.

41 — *Wunenburger* v *Commission*, paragraph 51 and the case-law cited.

42 — See, by analogy, *Wunenburger* v *Commission*, paragraphs 52 to 59, and Case T-299/05 *Shanghai Excell M & E Enterprise and Shanghai Adeptech Precision* v *Council* [2009] ECR II-565, paragraphs 48 to 52.

43 — See, to that effect, Case 92/78 *Simmenthal* v *Commission* [1979] ECR 777, paragraph 32.

44 — With regard to the non-material interest which an applicant has in the resolution of a dispute, see, inter alia, Case 155/78 *M.* v *Commission* [1980] ECR 1797, paragraph 6, and Case C-198/07 P *Donal Gordon* v *Commission* [2008] ECR I-10701, paragraphs 42 to 45, and points 49 to 53 of my Opinion in the latter case. See, also, Case T-131/99 *Shaw and Falla* v *Commission* [2002] ECR II-2023, paragraph 36.

45 — See paragraph 99 of the application in Case T-127/09.

of the contested act.[46] This is particularly the case where, as in the present case, the appellant relies on an infringement of his right to a fair hearing, which could have prevented him from showing that he had no link with a terrorist organisation and that he therefore should not have been named on the list at issue.

67. Thirdly, the General Court failed to take into account the case-law according to which an applicant may also retain an interest in seeking annulment of an act which adversely affects him in so far as a finding of illegality by the courts of the European Union could be used by him as the basis for possible proceedings for damages, which would be intended adequately to compensate for the damage which has been caused to him by the contested act.[47]

68. Those factors demonstrate, in my view, that the appellant has not obtained 'full' satisfaction as a result of the repeal of the contested act in the course of the proceedings. It is true that he obtained part of what he sought, namely the removal of his name from the list at issue and of the ensuing effects. However, the possible irregularities relating to his inclusion on that list have not been remedied. The appellant has therefore not lost all personal interest in bringing proceedings.

69. I also note that, although it is possible to accept, as the General Court states in paragraphs 35 and 36 of the order under appeal, that there is a difference between the cases in which repealed and replaced restrictive measures were at issue, with the maintenance of the interested parties on the list at issue,[48] and the present case in which the name of the applicant is simply removed from the list at issue, such a difference in no way implies, for the reasons set out above, that the applicants' interest in bringing proceedings should be considered as having ceased to exist in the second situation.

70. For all those reasons, I consider that the General Court erred in law in ruling that there was no longer any need for it to adjudicate on the application for annulment, on the ground that the applicant had not retained an interest in bringing proceedings. It follows that the second ground of appeal is well founded and that the order under appeal must therefore be set aside. I also suggest that the Court should refer this case back to the General Court for it to rule on Mr Abdulrahim's action for annulment and should reserve the costs.

V – **Conclusion**

71. In the light of all the foregoing considerations, I propose that the Court should:

(1) set aside the order of the General Court of the European Union of 28 February 2012 in Case T-127/09 *Abdulrahim* v *Council and Commission*, in so far as the General Court of the European Union ruled that there was no longer any need to adjudicate on the application for annulment;

(2) refer this case back to the General Court of the European Union for it to rule on Mr Abdulrahim's action for annulment and reserve the costs.

46 — Thus, inasmuch as a procedural irregularity could affect the legality of the contested regulation, the applicant has a legitimate interest in relying on the possible non-observance of essential procedural requirements: see Case C-304/89 *Oliveira* v *Commission* [1991] ECR I-2283, paragraph 17.

47 — See, in particular, Case 76/79 *Könecke Fleischewarenfabrik* v *Commission* [1980] ECR 665, paragraph 9; Joined Cases C-68/94 and C-30/95 *France and Others* v *Commission* [1998] ECR I-1375, paragraph 74; Case C-174/99 P *Parliament* v *Richard* [2000] ECR I-6189, paragraphs 33 and 34; and Case C-59/06 P *Marcuccio* v *Commission* [2007] ECR I-182, paragraph 32. See also order in Case T-6/96 *Contargyris* v *Council* [1997] ECR-SC I-A-119 and I-357, paragraph 32, and *Shanghai Excell M & E Enterprise and Shanghai Adeptech Precision* v *Council*, paragraph 53.

48 — See, inter alia, judgments cited in footnote 14 of this Opinion, and *Hassan and Ayadi* v *Council and Commission*.